

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT COURT OF NEW YORK

3 CINTHIA THEVENIN, individually, and as wife of
4 EDSON THEVENIN, Decedent, and as Administratrix of
5 the Estate of EDSON THEVENIN, and as mother and
6 natural guardian of Infant N.T., and as mother and
7 natural guardian of Infant Z.T.,

8 Plaintiffs,

9 -against-

10 Index No.

11 16-CV-1115 (NAM/DJS)

12 THE CITY OF TROY and SERGEANT RANDALL FRENCH,

13 Defendants.

14 STENOGRAPHIC MINUTES OF DEPOSITION conducted of
15 RANDALL FRENCH, pursuant to Agreement, on the 28th day of
16 July, 2017, at the law offices of Fitzgerald Morris Baker
17 Firth, 16 Pearl Street, P.O. Box 2017, Glens Falls, New
18 York, commencing at 9:39 a.m.; before MICHELE AMBROSINO,
19 a Shorthand Reporter and Notary Public within and for the
20 State of New York.
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1 APPEARANCES:

2 On behalf of Plaintiffs:

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—RANDALL FRENCH - 07/28/17—

1 Q. When you were sitting with Sergeants Bornt and
2 White, were you aware whether they were recording
3 your words in any form?

4 A. I did not see any recording devices.

5 Q. Okay. Are you aware whether they were typing any
6 notes while they were speaking with you?

7 A. I did not see a computer.

8 Q. Are you aware of whether they were making written
9 notes on any piece of paper of the conversation?

10 A. I don't remember.

11 Q. Okay. Have you ever seen a written summary of
12 your interview with White and Bornt?

13 A. No.

14 (Plaintiffs' French Exhibit 3 was marked for
15 identification.)

16 Q. I'm going to show you a report and ask you to
17 look at the first page of it. It's been marked
18 French 3 for purposes of this deposition. Across
19 the top it says "City of Troy Police Department
20 Response to Resistance Report," and it names
21 Captain Montanino on the top right corner.

22 Do you see that?

23 A. I do.

24 Q. Have you ever seen a Response to Resistance

—RANDALL FRENCH - 07/28/17—

1 Report?

2 A. Yes.

3 Q. Have you ever completed a Response to Resistance
4 Report?

5 A. Yes.

6 Q. Is there something in the Troy police manual that
7 requires or instructs an officer to complete a
8 Response to Resistance Report?

9 A. Yes.

10 Q. To your knowledge, what's the requirement that an
11 officer complete a Response to Resistance Report?

12 A. That it shall be completed, unless they're
13 injured in such a way that it's not possible.

14 Q. And what specifically are the instructions for
15 not completing a Response to Resistance Report?

16 A. I don't recall.

17 Q. Okay. Leaving aside the exception to filling it
18 out, what would be a situation that the Troy
19 police manual would require one to complete a
20 Response to Resistance Report?

21 A. Anytime force is used.

22 Q. And that force could even mean the show of force,
23 like showing a service weapon without actually
24 firing; correct?

—RANDALL FRENCH - 07/28/17—

1 A. Yes.

2 Q. Now, using loud directive terms would not require
3 a Response to Resistance Report; correct?

4 A. No.

5 Q. Did you complete a Response to Resistance Report
6 for April 17th, 2016?

7 A. No.

8 Q. Were you asked to complete a Response to
9 Resistance Report?

10 A. No.

11 Q. Were you told that you should not complete a
12 Response to Resistance Report?

13 A. No.

14 Q. And normally if an officer uses a service weapon
15 in an officer-involved shooting, they would
16 generally complete a Response to Resistance
17 Report without certain exceptions; correct?

18 A. Correct.

19 Q. Why is it that you did not complete a Response to
20 Resistance Report?

21 MR. ASPLAND: I'm going to direct him not
22 answer the question to the extent that it invades
23 the attorney/client privilege.

24 Q. All right. Then let's make it easy.

—RANDALL FRENCH - 07/28/17—

1 Did you discuss with an attorney whether or
2 not to complete the Response to Resistance
3 Report?

4 MR. ASPLAND: Other than me, any attorney at
5 anytime --

6 MR. TORCZYNER: Anytime.

7 MR. ASPLAND: -- is that your question?

8 MR. TORCZYNER: Yes.

9 A. When I do complete it, it will be my attorney Mr.
10 Safranko.

11 Q. Okay. That's for the future?

12 A. Uh-huh.

13 Q. I'm just asking you whether previous to today,
14 whether you discussed with any attorney the --
15 whether or not -- withdrawn.

16 Prior to today, did you discuss with any
17 attorney whether you should or should not fill
18 out the Response to Resistance Report for the
19 events of April 17th, 2016?

20 A. No.

21 Q. Prior to today has any attorney advised you to
22 not fill out a Response to Resistance Report?

23 A. No.

24 Q. You're a member of the union of the Troy Police

—RANDALL FRENCH - 07/28/17—

1 Department?

2 A. Yes.

3 Q. Okay. Do you have a union rep?

4 A. We have a PBA present.

5 Q. Okay. Did the PBA president instruct you not to
6 fill out a Response to Resistance Report?

7 A. No.

8 Q. Generally when a Response to Resistance Report is
9 completed is it turned into a higher-ranking
10 officer, and I use that term loosely, within the
11 department?

12 A. It is approved by the road sergeant, and then
13 signed off by the commanding officer, such as the
14 captain if they're available. If the commanding
15 officer's not working that night, it just goes
16 with the sergeant's approval and gets forwarded
17 through.

18 Q. Okay. You were the road sergeant that night;
19 right?

20 A. Yes.

21 Q. So this wouldn't have gone to you, it would have
22 gone theoretically to Captain Montanino?

23 A. Or the desk sergeant can sign it in that case.

24 Q. Did anyone ask you to fill out a Response to

—RANDALL FRENCH - 07/28/17—

1 Resistance Report?

2 A. No.

3 Q. Did you ever at any point begin to prepare a
4 Response to Resistance Report for that evening?
5 Do you understand the question I'm asking?

6 MR. ASPLAND: Can we consult? You got a
7 question pending, it's up to you.

8 Q. You're asking whether you can speak to counsel.
9 My question to you is: The question you're going
10 to ask counsel, does that involve something you
11 previously discussed with him?

12 A. Yes.

13 Q. Okay. You guys can talk.

14 (An off-the-record discussion was held.)

15 MR. TORCZYNER: Is there going to be an
16 answer to the question?

17 MR. ASPLAND: Yeah.

18 (The requested testimony was read back.)

19 A. Yes.

20 Q. Okay. Was that prepared manually, or on a
21 computer?

22 A. Computer.

23 Q. Where was that computer located?

24 A. My house.

—RANDALL FRENCH - 07/28/17—

1 Q. Had you ever completed a Response to Resistance
2 Report on your home computer before?

3 A. No.

4 Q. Are you familiar with the concept of a VPN; have
5 you ever heard that term before?

6 A. Yes.

7 Q. Does the City of Troy Police Department have VPN
8 access to its computer systems?

9 A. Do you mean for like remote access?

10 Q. Yes.

11 A. I don't know.

12 Q. Okay. How would you complete a Response to
13 Resistance Report on your home computer; is that
14 a form that you have on your home computer?

15 A. I would carry a thumb drive which has all of our
16 forms on it; I can access them anywhere.

17 Q. Where is the Response to Resistance Report that
18 you started; is it still in existence?

19 A. It still exists on my computer.

20 MR. TORCZYNER: I'll make a request for it.

21 Q. Your counsel and I will discuss that subsequently
22 as far as your instructions, and you have -- you
23 can speak to John about where to go with that.

24 DOCUMENT/INFORMATION REQUESTED:

—RANDALL FRENCH - 07/28/17—

1 Q. The first page of this report, do you see that?

2 A. Yes.

3 Q. Did you complete that entire first page on the
4 home computer?

5 A. I don't know.

6 Q. Approximately how long after the incident of
7 April 17th, 2016, did you start to prepare the
8 Response to Resistance Report?

9 A. I don't remember.

10 Q. Was it before or after you testified at the grand
11 jury?

12 A. After.

13 Q. Was it more than a week after you testified at
14 the grand jury?

15 A. Yes.

16 Q. Was it within the last month?

17 A. From now?

18 Q. Yeah.

19 A. No.

20 Q. Okay. So at some point after the end of
21 April 2016 and before June 2017?

22 A. Yes.

23 Q. Other than the Response to Resistance Report,
24 have you prepared anything in typewritten form,

—RANDALL FRENCH - 07/28/17—

1 computer typewritten form which records the
2 events that took place in your own words on
3 April 17th, 2016?

4 A. Just a Supplemental Report that is required for
5 officers involved in motor vehicle accidents.

6 Q. Where is that Supplemental Report?

7 A. On my computer.

8 Q. Did you complete that, or is that also in
9 process?

10 A. In process.

11 Q. Did you prepare that Supplemental Report in and
12 around the same timeframe that you started this
13 Response to Resistance Report?

14 A. Yes.

15 Q. Is that Supplemental Report completed, or is it
16 in process?

17 A. In process.

18 Q. Is anyone aware that you begun to prepare these
19 two reports?

20 A. Mr. Safranko is.

21 Q. Did Mr. Safranko give you -- I'm going to preface
22 my question with a statement; just please hear my
23 statement. I don't want to know what he told
24 you --

—RANDALL FRENCH - 07/28/17—

1 A. Okay.

2 Q. -- but I do want to know. And my question is
3 going to be whether he talked you to about it.

4 Do you understand the difference?

5 A. Yes.

6 Q. Did Mr. Safranko discuss with you your
7 preparation of the Response to Resistance Report
8 and the Supplemental Report that you just
9 mentioned?

10 A. We discussed the Response to Resistance Report.
11 I -- yes, we discussed both.

12 Q. Has Mr. Safranko seen your draft Response to
13 Resistance Report and your draft Supplemental
14 Report?

15 A. Yes.

16 Q. Do you recall when he saw them?

17 A. I emailed them to him. And shortly after I
18 started them, and --

19 Q. Again, I don't want to know anything he responded
20 to you.

21 A. Okay. And we talked shortly thereafter.

22 Q. If you were to go home and look at your emails,
23 would you know the date of that email; do you
24 generally save your sent messages, or do you

—RANDALL FRENCH - 07/28/17—

1 delete them?

2 A. I'm pretty sure I save them. I don't make a
3 habit of deleting them, so it's possible.

4 Q. And I'm not instructing what to do or not do with
5 anything. You have two lawyers that can give you
6 legal advice. I'm not one of them. But to the
7 extent that you have not deleted that email, I'm
8 going to ask your counsel to ensure that it does
9 not get deleted.

10 MR. ASPLAND: You're talking about the
11 communication between he and Mr. Safranko?

12 MR. TORCZYNER: That's correct. I'm not
13 asking for production of it; I'm asking for it to
14 be preserved. And I would ask to leave a gap in
15 the transcript.

16 Q. If you're capable of ascertaining the date when
17 that email was sent, if you could fill it in on
18 the gap in the transcript when it's given to you
19 to review.

20 A. Okay.

21 Q. Do you understand those instructions?

22 MR. ASPLAND: I'll take that request under
23 advisement.

24 MR. TORCZYNER: Fair enough.